



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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January 31, 2020

Mr. Stan Knight
Warden
Plainfield Correctional Facility
727 Moon Road
Plainfield, IN 46168

Re: OCR Docket # 05-19-4034

Dear Mr. Knight:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Indiana Department of Correction (IDOC) alleging discrimination on the basis of disability.

Specifically, the complaint alleges that IDOC discriminates based on disability against prisoners receiving dialysis at Plainfield Correctional Facility (PCF) by denying them the opportunity to transfer to another location to receive access to educational programming.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, IDOC is subject to Section 504.

During the investigation, OCR reviewed documentation provided by IDOC and interviewed IDOC personnel. Prior to OCR making a finding, IDOC signed the enclosed Voluntary Resolution Agreement (Agreement) to resolve the complaint.

Legal Standards

The Section 504 regulation, at 34 C.F.R § 104.4(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Section 504 regulation, at 34 C.F.R § 104.3(l), defines a qualified individual with a disability, with respect to postsecondary and vocational education services, as an individual with a disability “who meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity.”

In determining whether a recipient has subjected an individual to discrimination on the basis of disability under the above regulation, OCR ascertains whether there were any apparent differences in the treatment of similarly situated individuals on the basis of disability. If different

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

treatment is established, OCR then considers whether the recipient had a legitimate, nondiscriminatory reason for the apparent difference in treatment and whether the reason provided by the recipient was a pretext for discrimination based on disability. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and procedures and whether there is any other evidence of disability discrimination.

Facts

IDOC offers a free college education program to inmates through its Moreau College Initiative (MCI), which began in 2013 and operates at the Westville Correctional Facility (WCF). According to several inmates at PCF, because PCF is the only prison in the IDOC system that provides male inmates with dialysis, IDOC would not allow inmates who require dialysis to apply to the MCI.

IDOC's transfer policy identifies 19 factors that may be considered as the basis for an inmate transfer, including "[t]o allow the offender to take advantage of educational, work, or other program opportunities in another facility." Another factor is "[d]ental/medical treatment." The policy references the "vast number of variables involved" in transfer determinations.

The MCI is a partnership between IDOC and Holy Cross College (College), sponsored by the University of Notre Dame. IDOC indicated that the MCI "exists as a type of prison-satellite site of [the College] given its unique proximity to the campus." It currently is a 100% on-site program. IDOC indicated that it could not accommodate prisoners with dialysis in the MCI, as it could jeopardize the health of inmates. IDOC wrote, "The cost and disruption to the facility and program of requiring dialysis to be given at [WCF] would place the whole [MCI] at operational risk." The Assistant Director of Operations for the MCI sent a letter to a PCF inmate dated April 24, 2019, which said that "to the best of our knowledge [WCF] does not accept individuals who are on dialysis. Therefore, we encourage you to seek admission into other IDOC programs."

IDOC provided documents explaining the MCI admissions process. The MCI is characterized as a "rigorous academic program of study in the liberal arts" and is open to inmates with a high school diploma or equivalency certificate.¹ Inmates interested in the program sit for a written essay in which they "respond to a prompt selected from a work of classic literature or contemporary academic writing." Applicants who score the highest on essays then are interviewed by two members of the MCI Faculty Steering Committee. The program currently seeks applicants from only four correctional institutions, including PCF. According to IDOC's Director of Education (Director), approximately 500-600 inmates apply to the program and only 15 inmates are accepted each semester; he said there are currently 70 inmates enrolled in the program. He said IDOC considers inmates that are incarcerated for at least 6 to 7 years because of the nature and length of the program.

¹ None of the inmates on dialysis at PCF applied for the MCI program. OCR has not yet determined if those individuals met the academic and technical standards requisite to admission or participation in the MCI program.

IDOC provided OCR with a list of educational programs available at PCF, including trade programs leading to certification, basic literacy instruction, high school equivalency programming, and “self-pay” college correspondence courses.

By letter dated June 27, 2019, the Director told a PCF inmate that IDOC was “open to on-site programming” at PCF and was also “open to partnerships with Indiana colleges and universities,” but that such partnerships “have not yet materialized.” The letter also indicated in response to an inquiry from the inmate that while video conferencing was a “good idea, it is not well suited for providing you with a quality educational experience. On-site programming with one on one interaction with a college professor is what our partners... have chosen to provide.” The letter asked the inmate to “be patient regarding on-site programming” at PCF and informed him that IDOC had college degree options available for inmates “through self-pay correspondence programming” operated by Oakland City University.

The Director informed OCR that he is not aware of any policies that would preclude inmates at PCF on dialysis from applying and that he would consider their applications for admission to the MCI program along with the other applicants. The Director said it was not the intent of IDOC to preclude application by those individuals with disabilities.

Analysis and Conclusions

OCR has concerns that inmates with disabilities who are in need of dialysis were discouraged from applying to the MCI due to their disability status. The evidence suggests that an inmate in need of dialysis was told by the Director of Operations of the MCI program that, “to the best of our knowledge [WCF] does not accept individuals who are on dialysis.” IDOC asserted that WCF cannot accept an inmate transfer because of the lack of available medical treatment necessary for their disability. The evidence also suggests that the educational programs offered at PCF are not comparable to the MCI program. While PCF is “open to partnerships with Indiana colleges and universities,” such partnerships “have not yet materialized.”

IDOC expressed interest in resolving this matter and signed the enclosed Agreement. The Agreement is aligned with the complaint allegations and, when fully implemented, will resolve the concerns described above. OCR will monitor the implementation of the Agreement.

This concludes OCR’s investigation of the complaint and should not be interpreted to address IDOC’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter.

This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that IDOC may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may file a private suit in federal court whether or not OCR finds a violation.

We wish to thank you and your staff for the cooperation IDOC extended to OCR in its investigation of this complaint. In particular, we wish to thank Mr. Jon Ferguson, counsel for IDOC. If you have any questions, please contact Sherry Rosenblum, Equal Opportunity Specialist, at 312-730-1601 or by email at Sherry.Rosenblum@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. Jon Ferguson